SUPREME COURT, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE

UNITED STATES

H. S. HACKIN and CHARLOTTE E. HACKIN, his wife, dba H. S. HACKIN PLUMBING & HEATING CO., and ROSALIND GALLAI, Plaintiff	)	No. 960
v.	)	
PIONEER PLUMBING SUPPLY CO., an Arizona corporation Defendant	)	

Petition for Writ of Certiorari

H. S. HACKIN
2842 N. Sheridan Rd.
Chicago, Illinois 60657

IN THE

SUPREME COURT OF THE

UNITED STATES

H. S. HACKIN and CHARLOTTE E. HACKIN, his wife, dba H. S. HACKIN PLUMBING & HEATING CO., and ROSALIND GALLAI, Plaintiff	)	No._____
v.	)	
PIONEER PLUMBING SUPPLY CO., an Arizona corporation Defendant	)	

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PETITION FOR WRIT OF CERTIORARI

a. REPORTS OF OPINIONS: There are no official or unofficial reports of the opinions delivered in the courts below.

b. DATES OF ORDERS AND JURISDICTION

(i) The date of the order sought to be reviewed, and the date of its entry, is August 26, 1970.

(ii) There was no order respecting a rehearing.

(iii) The Court has jurisdiction to review the judgment of the Ninth Circuit Court of Appeals on Writ of Certiorari by virtue of 28 U.S.C. Sec. 1254(1). The Court has authority to provide relief under 28 U.S.C. Sec. 2106.

c. QUESTIONS PRESENTED FOR REVIEW: The question presented for review is whether an appellant who had filed a Motion To Proceed In Forma Pauperis should be permitted to file bond for costs when he later became financially able to pay.

d. RULES WHICH THIS CASE INVOLVES:

Rule 24.

PROCEEDING IN FORMA PAUPERIS

(a) Leave to Proceed on Appeal in Forma Pauperis from District Court to Court of Appeals. A party to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed, together with an affidavit showing, in the detail prescribed by Form 4 of the Appendix of Forms, his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district trict court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or

after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the district court, or if the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

e. STATEMENT OF MATERIAL FACTS: Plaintiff-Appellant filed an action in the Federal District Court For the District Of Arizona collaterally attacking a state court judgment on the ground that it is void because the state court committed Constitutional error. Defendant-Appellee did not answer but instead filed a Motion To Dismiss For Lack Of Jurisdiction, which the District Judge granted. Being of the opinion that a Federal Court has jurisdiction to hear a collateral attack on a void judgment and that the District Court should render a decision on the merits, plaintiff-appellant appealled to the Ninth Circuit Court of Appeals. Because Plaintiff-Appellant was unable to raise the required $250 bond for costs he filed a Motion To Proceed In Forma Pauperis, which the District Court denied on the ground that the appeal was not taken in good faith. Plaintiff-Appellant then presented his Motion To Proceed In Forma Pauperis to the Ninth Circuit, which was dated May 28, 1970.

On July 10, 1970, the Ninth Circuit, through its Motions Clerk, advised that the pauper's affidavit as described in Appellate Rule 24(a) should be submitted by each party-plaintiff in that the Notice of Appeal was filed in behalf of all plaintiffs. By August 17, 1970, Plaintiff-Appellant had been able to raise the $250 cost bond and moved the Court to permit him to file the bond. This motion was accompanied by an affidavit stating

that the motion was made in good faith, that it was not an attempt to avoid payment of any charges which might ultimately be adjudged, and was not for the purpose of unnecessary delay or harassment. On August 26, 1970, the Ninth Circuit denied both Plaintiff-Appellant's Motion To Proceed In Forma Pauperis and his Motion For Leave To File Bond For Costs, and the Court granted Defendant-Appellee's Motion To Dismiss. Plaintiff-Appellant now petitions the United States Supreme Court For Writ of Certiorari to review the Ninth Circuit's denial of his motions and its final order of dismissal.

f. REVIEW OF JUDGMENT OF STATE COURT: Review of the judgment of the state court is not sought at this time.

g. BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE: The basis for federal jurisdiction in the court of first instance is 28 U.S.C. Secs. 1331, 1332, and 1343(3).

h. REASONS FOR ALLOWING WRIT: The reasons for allowing this Writ Of Certiorari are, first, that there is a dearth of case law or authority as to the rights of pauper's in civil appeals. The Supreme Court has on many occasions reviewed and made declarations as to the rights of pauper's in criminal appeals but there are indeed few cases which deal with the rights of paupers in civil appeals. The judicial machinery should be open to rich and poor alike and the United States Supreme Court should set more definite guidelines as to when less fortunate individuals should be granted the right of appeal.

Secondly, there is no sound reason why taking an appeal from a lawsuit should be conditioned upon paying costs which rarely come up to the amount of the bond, which usually are only a small fraction of the attorney fee, and which often is infinitesimal as compared with the amount of the judgement under review.

Finally, the plaintiff-appellant has invested a lifetime of labor and toil in a ranch of which he was deprived by the Constitutional error of a state court in erroneously denying him a trial by a jury of his peers. Plaintiff-appellant would not now be petitioning to the United States Supreme Court were his whole life and personal worth not at stake in this litigation.

i. CONCLUSION: The questions presented in this Petition are substantial and should be reviewed by Writ of Certiorari.

H. S. HACKINS

Appendix:

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1107 Arizona Title Building
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258-2755
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

H. S. HACKIN and CHARLOTTE E. HACKIN, his wife, dba H. S. HACKIN PLUMBING & HEATING CO., and ROSALIND GALLAI, Plaintiffs	)	NO. CIV 70 53 PHX WEC ORDER OF DISMISSAL
vs.	)	
PIONEER PLUMBING SUPPLY CO., an Arizona corporation, Defendant	)	

The above entitled cause having come on before this Court for hearing on Monday, April 6, 1970 at 10:00 o'clock A.M. and the Court having considered defendant's Motion to Dismiss for Lack of Jurisdiction of the subject matter and having heard oral argument by counsel for defendant and plaintiffs, and having considered plaintiffs' complaint and matters set forth in memoranda of respective counsel and in oral argument, and the Court having found that this Court lacks jurisdiction of the subject matter of plaintiffs' complaint.

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiffs' complaint be and the same hereby is dismissed.

DONE IN OPEN COURT this 6th day of April, 1970.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

H. S. HACKIN and CHARLOTTE E. HACKIN, his wife, dba H. S. HACKIN PLUMBING & HEATING CO., and ROSALIND GALLAI,	)	
Plaintiffs,	)	No. Civ-70-53 Phx. WEC
vs.	)	O R D E R
an Arizona corporation,	)	
Defendant.	)	

Plaintiffs have submitted, without a hearing, a motion for leave to proceed in forma pauperis on appeal from this Court's granting of defendant's motion to dismiss the complaint for want of jusidiction over the subject matter.

Having reviewed the pleadings and motions in this matter, and the Court's order of dismissal, the Court is of the opinion that an appeal could not be taken in good faith.

IT IS ORDERED that the motion to proceed in forma pauperis on appeal is denied.

DATED this 21st day of May, 1970.

WALTER E. CRAIG
United States District Judge

Copies sent to:
Atmore L. Baggot, Esquire
Richard E. Johnson, Esquire

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

H. S. HACKIN, et al.,	)	
Plaintiffs-Appellants,	)	
v.	)	No. M-5108
PIONEER PLUMBING SUPPLY CO.,	)	O R D E R
Defendant-Appellee.	)	

Before: BARNES and BROWNING, Circuit Judges

Appellants' motion to proceed in forma pauperis and motion for leave to file bond for costs are denied. Appellee's motion to dismiss is granted. Appellee's motion for extension of time to file an answering brief is denied as moot.

Dated: August 26, 1970